

IN THE HIGH COURT OF FIJI  
AT SUVA  
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 24 OF 2022

**BETWEEN:**                      **SHAZEEM VISHAL DEAN**                      **APPELLANT**

**A N D:**                              **THE STATE**    **RESPONDENT**

**Counsel:**                              Ms. T. Kean for Appellant  
    Ms. B. Kantharia for Respondent

**Date of Hearing:**                      23<sup>rd</sup> March 2023

**Date of Judgment:**                      13<sup>th</sup> July 2023

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**J U D G M E N T**

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1. The Appellant pleaded guilty to one count of Dangerous Driving, contrary to Section 98 (1) and 114 of the Land Transport Act and one count of Driving a Motor Vehicle whilst there was a present blood a concentration of alcohol which was in excess of the prescribed limit, contrary to Section 103 (1) (a) and 114 of the Land Transport Act in the Nausori Magistrate’s Court on the 7th of February 2022. He was then convicted and sentenced by the learned Resident Magistrate, imposing a fine of \$2000 to be paid in 2 months, in default, 6 and ½ months imprisonment. Moreover, the learned Resident Magistrate disqualified the Appellant from driving for two years. Aggrieved with the said sentence, the Appellant appealed to this Court on the following two grounds:

### Appeal Against Sentence

- a) *That the learned Magistrate erred in law and in principle when she passed a sentence that was harsh and excessive.*
  - b) *That the learned Magistrate erred in law and fact when not giving any reasons or justification for arriving at a sentence which was harsh.*
2. Both grounds of the appeals are founded on the contention that the sentence is harsh and excessive. The learned Counsel for the Respondent, in her supplementary submissions, conceded that this Court should consider imposing a sentence that is in line with the current sentencing practices in the Magistrate's Court. In their respective supplementary submissions, both the Counsel extensively outlined the current sentencing practice in the Magistrate's Court in dealing with offences of this nature.
  3. The maximum sentence for Dangerous Driving is a \$1000 fine/12 months' imprisonment and disqualification for six months if it is the first offence. The maximum sentence for the second count is a \$2000 fine/2 years' imprisonment and mandatory disqualification from 3 months to 2 years if it is the first offence. The Appellant was a first offender.
  4. The summary of facts does not reveal any aggravating circumstances of these offences besides providing the factual backgrounds of the elements of the offences. The Appellant was a first offender and pleaded guilty early in the proceedings. Considering the present sentencing practices in this jurisdiction and the early pleas, the sentence imposed by the learned Magistrate is harsh and excessive. Therefore, I find this is an appropriate case for this Court to intervene under Section 256 of the Criminal Procedure Act. Considering the above-discussed reasons, a fine of \$500 and 6 months disqualification from driving with effect from 31st of March 2022 would be the appropriate sentence for this matter.

5. I accordingly make the following orders:

- a) The Appeal is allowed,
- c) The sentence dated 31st of March 2022 is set aside and replaced with the fine of \$500, in default, 50 days imprisonment. Furthermore, the Appellant is disqualified from driving for a period of 6 months, effective from 31st of March 2022.

6. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
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**Hon. Mr. Justice R.D.R.T. Rajasinghe**

**At Suva**

13<sup>th</sup> July 2023

**Solicitors.**

Office of the Legal Aid Commission for the Appellant.

Office of the Director of Public Prosecutions for the Respondent.